



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET  
Budget Development, Planning and Administration  
State Planning Coordination

October 2, 2008

Mr. Gary Norris  
City of Milford  
P.O. Box 159  
Milford, DE 19963

RE: PLUS review – 2008-08-03; City of Milford Comprehensive Plan

Dear Mr. Norris:

Thank you for meeting with State agency planners on September 3, 2008 to discuss the proposed City of Milford comprehensive plan.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting.

***Certification Comments:*** These comments must be addressed in order for our office to consider the plan amendment consistent with the terms of your certification and the requirements of Title 22, § 702 of the Del. Code.

1. The plan includes an “Urban Growth Boundary” on Figures 4, 10, 13 and 14 a-c. The concept of the Urban Growth boundary is not defined in the plan. The plan text must be revised to define the term, and also to fully elaborate on the meaning and use of this concept as it relates to the City’s growth and annexation plans.
2. The plan text and maps series must be revised to clearly identify lands which the City intends to consider for annexation within the five year period covered by this plan update. Please see our recommendation regarding the development of an annexation phasing plan below.

3. It is our understanding from the discussion at the PLUS meeting that the City intends to annex the lands identified as “open space” East of Route 1. The plan lacks any definition of the term open space, and the plan text does not clearly articulate the City’s intentions regarding this area. The plan must be revised to define what is meant by “open space” and to describe the City’s development policies that will govern this area.
4. The State objects to any further annexations East of Route 1 that would result in further growth and development. The State has invested considerable funds in preserving the viability of the agricultural industry in this area, and protecting the natural resources that are present. The City is asked to work with our office to come to a mutual understanding of land preservation objectives, with the hopes that we will be able to come to an agreement that can be embodied in the plan. It may also be desirable to develop some companion ordinances to implement land preservation in this area. Please see the detailed comments on this area from the Delaware Department of Agriculture and the Department of Natural Resources and Environmental Control below in this letter.
5. The State also objects to the inclusion of the lands in agricultural preservation districts in annexation plans for the North Neighborhood. It is the policy of the Delaware Department of Agriculture that agricultural preservation districts remain under County jurisdiction until the owners voluntarily remove their properties from the program. It may be necessary for the City to reconsider annexation plans for the entire North Neighborhood, perhaps through a more detailed annexation phasing plan as is recommended below in this letter.
6. The State and the City are engaged in a Memorandum of Agreement (MOA) regarding master planning for the development of the “Milford East Planning Area.” The MOA was finalized in March of 2008. The plan must describe our ongoing MOA and the sub-area planning study for the Sussex County portion of Milford. We support this effort, and look forward to working with the City to see it completed.
7. The plan must demonstrate that the City has coordinated with both Kent and Sussex Counties in preparing this comprehensive plan.
8. The plan must be revised to demonstrate that the City has reviewed both County plans as well as the State Strategies, and has considered these planning documents in the planning effort. Book 2 identifies future actions, but does not seem to clearly indicate that the City has considered these important planning documents in the preparation of this plan.

***Recommendations:*** Our office strongly recommends that the Town consider these recommendations from the various State agencies as you review your plan for final approval.

**Office of State Planning Coordination – Contact: David Edgell 739-3090**

The Office of State Planning Coordination would like to commend the City of Milford for a well done comprehensive plan. The plan document and map series are very extensive, and represent a detailed vision for the future growth and development of Milford. This plan represents a new format, and a thoroughly updated plan text that should serve Milford well. We feel that the neighborhood planning focus of the plan is an excellent approach for the City, and think that this will be something that can be built upon with more detailed master plans. Our office would also like to compliment the City on their detailed implementation matrix found in Book 2. This matrix provides clear guidance on implementation, and should allow the City to program future efforts and track their progress. In addition to addressing the certification items above, it is hoped that the City will consider these recommendations in order to strengthen the plan:

1. In response to a question about the “Urban Growth Boundary” at the PLUS meeting, Mr. Baird replied that the boundary represents both the broad area covered by Milford’s services, and the City’s annexation plan. This area is probably a reasonable representation of the territory influenced by Milford’s many public services, infrastructure and institutions. However, it is a very large area to consider for annexation, at least in the five year period covered by this plan. It is strongly recommended that the City of Milford review this area and develop an annexation phasing plan. Such a plan would identify lands that can reasonably be annexed within the five year period covered by this plan. The City could also identify parcels that have potential for annexation in the longer term, and also areas where annexation is not desirable or feasible but may still benefit from or be influenced by Milford’s services, infrastructure and institutions. It is further recommended that this plan revision be described in the text.
2. It is recommended that the annexation phasing plan described above take into account any agreements that can be reached regarding land preservation East of Route 1, and a logical phasing of annexations North of the City that takes into account the exclusion of the Bowman Agricultural Districts.
3. In order to accomplish the preservation objectives discussed at the PLUS meeting, it is recommended that the City consider developing a Transfer of Development Rights program. Our office will be willing to assist you if you would like to consider this option.
4. Our office supports the concept of neighborhood planning. It is recommended that the City undertake sub-area plans of all neighborhoods following the model developed for the Milford East Planning Area (Southeast neighborhood).

5. It is recommended that the plan be revised to more clearly define and reference the land use categories found on the plan maps.
6. The plan contains a number of what appear to be incorrect references to other documents. These should be reviewed and corrected as necessary. Here are some examples:
  - a. Several references to Chapters 7 and 8 in the annexation plan. Presumably these are references to chapters in the old plan which will be superseded by this plan.
  - b. The community design plan indicates that TND is a category on the land use plan map. The term TND is not defined, nor is it represented on the map.
  - c. There are some sections which reference an “area of concern” (such as on page 55), but there is no definition of “area of concern,” nor is it represented on any of the maps.

**State Historic Preservation Office (SHPO) – Contact: Terrence Burns 739-5685**

No comments received.

**Department of Transportation – Contact: Bill Brockenbrough 760-2109**

The City of Milford has updated its 1990 Comprehensive Plan (previously updated in 1995 and 2003 and amended in 2004 and 2005) and has submitted their draft plan for review.

Generally DelDOT is supportive of the Plan as written. They offer the following suggestions as to how the Plan might be improved.

- 1) In the discussion of public involvement (Book One, pages 6 and 7), DelDOT recommends that an effort be made to quantify that involvement in the text of the Plan. For example, it should be recognized that there were only 40 responses to the Residential Survey. If possible, the Plan should also mention how many surveys were sent out and by what means. Also, the number of public meetings, and the types of meetings at which the Plan was discussed should be specified, or at least estimated, e.g. two workshops, five regular Planning Commission meetings and five City Council meetings. The purpose is to give both the public and future decision makers an indication of how much the Plan reflects public opinion as opposed to planning staff or a few activists.
- 2) On page 59 in Book One, the discussion of the intersection of Wilkins Road and Delaware Route 1 states that “the intersection is not yet in the design phase and will receive further study before design can begin.” This discussion should be updated. Design has begun. The Town may contact the DelDOT Assistant

Director for Project Development South, Mr. Michael Simmons, for more information. Mr. Simmons can be reached at (302) 760-2330.

- 3) In general, DelDOT supports Objectives 9.4, 9.5 and 9.6 in Book Two. The Plan, as written, defers much of the substance that would otherwise be in the Plan regarding land use and transportation planning to the “regional studies” mentioned in Strategy 9.4.2 (page 27 of Book Four). DelDOT looks forward to working with the City on those studies. They believe their results should be used to amend the Plan when they are complete.

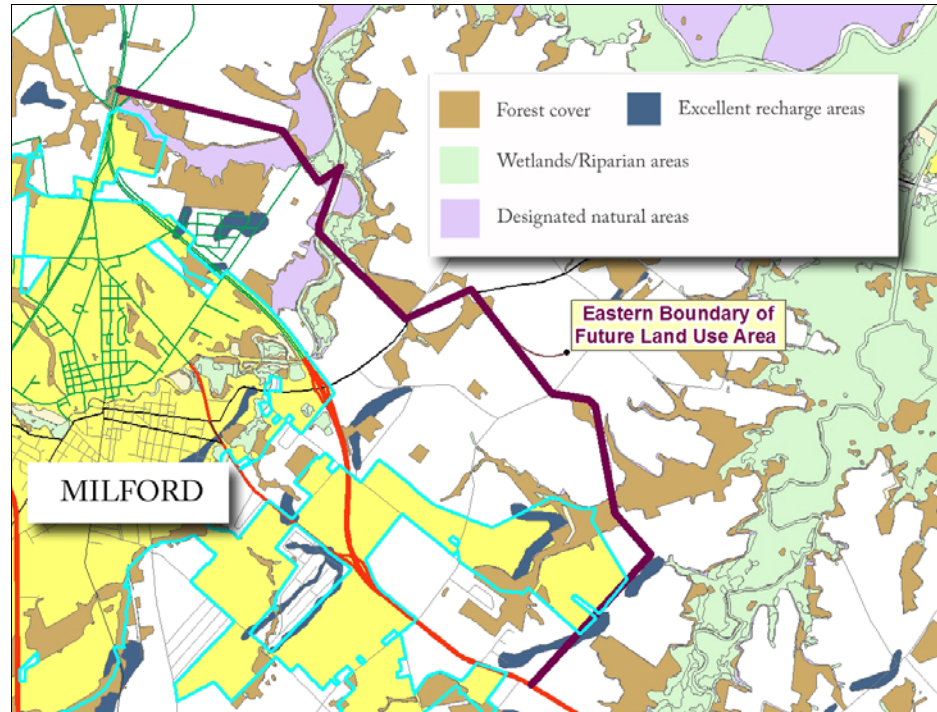
DelDOT recommends expanding Strategy 9.6.1 to read “Construct an access road, as depicted in Figure 13, to facilitate the development of this area as part of the proposed grade-separated intersection at SR 1 and NE Front Street.”

**The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-9071**

In terms of Milford’s proposed annexation areas, DNREC concurs with the Department of Agriculture’s concerns about encroachment on farms that are permanently preserved or in Agricultural Preservation Districts. We also have concerns about the impact on natural resources within annexation area, particularly those lands east of Route 1. The included map depicts areas of forest cover, wetlands and the riparian corridor along the Mispillion River, as well as designated Natural Areas and excellent recharge areas.

Route 1 is an artificial barrier that will require residents living to its east to drive to virtually every function of their daily lives. We are also concerned, as detailed below, about the increase in impervious cover and the effect on water and air quality as this area is developed.

If the city annexes these properties east of Route 1, we strongly urge the city to work with DNREC to develop ordinances that protect these key environmental features and reduce the impacts of development. The city has the opportunity to be a model for other jurisdictions in southern Delaware and set a high standard for protections that safeguard both the environment and Milford’s quality of life.



We also ask the city to work with DNREC, DeIDOT and the Department of Agriculture on a transfer of development rights ordinance and consider designating those lands as a TDR sending area.

The State of Delaware, like every other coastal state, is becoming increasingly concerned about the potential impacts of sea level rise on its resources and citizens. The areas proposed for annexation to the East of Milford are within and adjacent to river corridors and floodplains. As sea level rises, the adjacent wetlands will likely migrate landward, retaining the wetland's natural buffering capability. If these areas are allowed to be developed, particularly at densities allowable within town boundaries, the natural ability of the river to adjust to sea level rise will be curtailed and new structures may be at risk not only by inundation, but by increased frequency and severity of storms.

## **Water Resources/Water Quality**

### *General Comments*

1. The Plan narrative should mention specific Federal and State wetland regulatory programs for protecting nontidal and tidal wetlands and incorporate the following proposed (or paraphrased) language as a "stand-alone" subsection under the Environmental Protection Plan section:

"Regulatory Protection of wetlands is mandated under Section 404 provisions of the Federal Clean Water Act. Certain other wetlands (mainly in tidal areas) are

accorded additional regulatory protection under provisions of Title 7, Delaware Code, Chapter 66. Compliance with these statutes may require an Army Corps of Engineers approved field wetlands delineation and/or an official DNREC wetland jurisdictional determination."

2. The Plan should make specific recommendations for reducing imperviousness. The following recommendations could be incorporated in an ordinance:

Require the use of pervious paving materials, whenever practicable, in lieu of conventional paving materials. The use of pervious paving materials is especially important for large commercial parking lot areas. Studies have shown a strong relationship between increases in impervious cover to decreases in a watershed's overall water quality. Reducing the amount of surface imperviousness through the use of pervious paving materials ("pervious pavers") in lieu of asphalt or concrete, is an example of practical BMPs that could easily be implemented to help reduce surface imperviousness.

Require an impervious surface mitigation plan for all residential and commercial development exceeding 20% imperviousness. The impervious surface mitigation plan should demonstrate that the impervious cover in excess of 20% will not impact ground water recharge, surface water hydrology, and/or water quality of the site and/or adjacent properties. If impacts to groundwater recharge, surface water hydrology will occur, the plan should then demonstrate mitigation of said impacts and/or if impacts cannot be mitigated, the site plan will be modified to reduce the impact of impervious cover. Additionally, it is further recommended the pervious paving materials be required. In commercial areas, it is strongly recommended that pervious paving materials be required for at least 50% of the total paved surface area(s).

Define how developers may calculate surface imperviousness. The calculation for surface imperviousness include all of the following forms of constructed surface imperviousness: all paved surfaces (e.g., roads, sidewalks, and parking areas), rooftops, and open-water stormwater management structures.

3. The Plan should make a recommendation to protect open space

It is strongly recommended that the Town exclude structural Best Management Practices (BMPs) such as community wastewater treatment areas, open-water stormwater treatment structures and wetlands from consideration as open space.

### *Specific Comments*

Book 1, Chapter 10, Page 65, Environmental Issues and Water Quality of the Mispillion River: Please replace the 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs with the following narrative and table:

Milford is located within the Mispillion River watershed, which is an impaired watershed according to Section 303(d) of the Clean Water Act. Under Section 303(d) of the 1972 Federal Clean Water Act (CWA), states are required to identify all impaired waters and establish total maximum daily loads to restore their beneficial uses (e.g., swimming, fishing, and drinking water). A TMDL defines the amount of a given pollutant that may be discharged to a water body from point, nonpoint, and natural background sources and still allows attainment or maintenance of the applicable narrative and numerical water quality standards. A TMDL is the sum of the individual Waste Load Applications (WLAs) for point sources and Load Allocations (LAs) for nonpoint sources and natural background sources of pollution. A TMDL may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. In simplistic terms, a TMDL matches the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact. A Pollution Control Strategy (PCS) specifies actions necessary to systematically achieve pollutant load reductions specified by a Total Maximum Daily Load for a given water body, and must reduce pollutants to level specified by State Water Quality Standards.

The City of Milford is located within the Mispillion Watershed of the greater Delaware River and Bay drainage. This watershed is assigned a range of nutrient (nitrogen and phosphorus) and bacterial TMDL load reduction requirements that, as mentioned previously, must be met in order to meet the State Water Quality Standards (See table 1).

<b>Delaware River and Bay Drainage</b>	<b>N- reduction requirements</b>	<b>P-reduction requirements</b>	<b>Bacteria-reduction requirements</b>
Mispillion	57%, 88% in Kings Causeway Branch	57%, 88% in Kings Causeway Branch	87%

Table 1: TMDL Nutrient (Nitrogen and Phosphorus) and Bacteria reduction requirements for the Mispillion watershed.

Book 2, Page 12, Environment Section: This section should offer more specific “actionable” environmental protection strategies than currently offered. We recommend an ordinance or ordinances which would:

- a) Require all applicants to submit to the City a copy of the development site plan showing the extent of State-regulated wetlands (as depicted by the State Wetland Regulatory Maps), and a United States Army Corps of Engineers (USACE) approved wetlands delineation as conditional approval for any new commercial and/or residential development. Additionally, the site plan should depict all streams and ditches which are jurisdictional pursuant to the Subaqueous Act (7 Del. C., Chapter 72) as determined by DNREC.

- b) Help protect freshwater wetlands where regulatory gaps exist between federal and state jurisdictions (i.e., isolated wetlands and headwater wetlands).
- c) Require a 100-foot upland buffer width from all wetlands or water bodies (including ditches).

Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from the landward edge of all wetlands and water bodies (including all ditches).

- d) Exclude structural Best Management Practices (BMPs) such as community wastewater treatment areas, open-water stormwater treatment structures and regulated wetlands from consideration as open space.
- e) Require an impervious cover mitigation plan for all residential developments exceeding 20% imperviousness. In commercial developments, it is strongly recommended that pervious paving materials be required for at least 50% of the total paved surface area(s) where practicable.
- f) Require the calculation for surface imperviousness for all commercial and residential development include all constructed forms of surface imperviousness, including all paved surfaces (roads, parking lots, and sidewalks), rooftops, and open-water stormwater management structures.
- g) Require the assessment of a project's TMDL nutrient loading rate through use of the Department's nutrient budget protocol. The applicant should be further required to use any combination of approved Best Management Practices (BMPs) to meet the required TMDLs for the affected watershed(s) in question.
- h) Prohibit development on hydric soil mapping units. Proof or evidence of hydric soil mapping units should be provided through the submission of the most recent NRCS soil survey mapping of the parcel or through the submission of a field soil survey of the parcel by a licensed soil scientist.
- i) Require the applicant to use "green-technology" stormwater management in lieu of "open-water" stormwater management ponds whenever practicable.

#### *Wastewater*

The Town of Milford discharges all of its raw wastewater to the Kent County Regional Wastewater Treatment Facility for treatment and discharge to the Murderkill River. The

City of Milford maintains a Sewer Ordinance assuring that all properties within the City or annexed to the City which generate wastewater are connected to the municipal sanitary sewer system. No privately owned systems are permitted within the City, unless grandfathered per the ordinance. No existing individual system may be replaced after failure; rather, the property owner is required to tie into the City's collection system.

No on-site or stand alone wastewater treatment and disposal systems are proposed or discussed in the Plan. The Ground Water Discharges Section (GWDS) agrees with this approach for wastewater management in Milford, and agrees with the Environmental Plans relative to wastewater management, and recommend its adoption.

#### *Water Resource Protection Areas*

DNREC commends the City's efforts in preparing this Plan; however, the Plan contains some contextual errors. In addition, the maps are difficult to interpret. As written, the City's source water protection ordinance is not protective of the resource.

1. In Book 1, page 71, the text refers the City's development of source water protection ordinances in "conformance with the Source Water Protection Law of 2001, SB 119 141st General Assembly, 2001". The proper citation for compliance with State Law is Title 7, Delaware Code, Chapter 60, Subchapter VI.
2. The Plan should contain a separate section discussing source water protection.
3. The maps are crowded with parcel data that obscure the feature the map is intended to show, making it difficult to interpret.
4. The City states that Ordinance No.2008-2 protects excellent ground-water recharge potential areas by "placing limitations on the percent of impervious area permitted by new development" (Book 1, page 45, paragraph three). This is a misrepresentation of the protectiveness of the ordinance.

§230-19.2, B. contradicts §230-19.2, D. 6) a. 1. The ordinance cannot allow a new conditional use that nullifies the intent of the source water protection ordinance. This second clause also cites only the public drinking supply for the City. The ordinance must cover all public wells as defined by Section 22.146 of the Delaware Code, not just those owned by the City. This clause is not protective of the resource. GPB recommends deleting §230-19.2, D. 6) a. 1, in its entirety.

Section §230-19.2, D. 7) b. 3, of the Ordinance defeats the purpose of limiting impervious cover. The preceding paragraph allows development up to a 60% threshold provided the applicant provides an Environmental Impact Assessment Report. This third paragraph nullifies the upper threshold limit for impervious cover by allowing development that has shown it does not meet post-development

standards or development that blatantly ignores the 60% threshold limit. This clause is not protective of the resource. GPB recommends:

- Delete §230-19.2, D. 7) b. 3 in its entirety.
- Use the 20% lower threshold limit and the 50% upper threshold limit as shown in §230-19.2, D. 6) c. 1.
- Amend §230-19.2F to include Zone 3.

## **Stormwater Management and Drainage**

### *General Comments*

The Drainage and Stormwater Section submits the following items to be considered when the City of Milford updates land use policy or specific ordinances.

- The Sediment and Stormwater Program is currently in the process of reviewing and updating the State's stormwater management regulations which, in the past, have focused on new development. However many existing storm water runoff issues are associated with older developments built prior to the adoption of stormwater regulations in 1990. Managing surface water for quality as well as quantity has become a major focus as well. Awareness of water quality concerns and regulations have required us to explore methods for quality and quantity management in new development as well as opportunities for retrofits and restorations.
- The Division of Soil and Water Conservation is requesting that the City incorporate a requirement for a stormwater and drainage review into the City's preapproval requirements for new development requests. Proposed development projects should hold a pre-application meeting with the delegated agency, the Kent Conservation District, to discuss stormwater and drainage prior to the City reviewing and/or approving plans or issuing building permits. The Sediment and Stormwater Program is set to begin requiring a pre-application meeting for all proposed land disturbing activities that require a detailed Sediment & Stormwater Plan within the coming year. These meetings are structured to assist developers in the design process and for early notification of approval requirements. In order to schedule a pre-application meeting, the applicant must forward a completed Stormwater Impact Study (SIS) to the appropriate Delegated Agency. Please contact Jennifer Campagnini or Elaine Webb with the DNREC Sediment and Stormwater Program if you have any questions regarding this new process. Please note that this process does not replace the State's PLUS process. The SIS Findings report will also be provided through that process.
- Lines and grades: If the City does not have a lines and grades requirement for new construction, the Division recommends that this be considered to help resolve drainage issues arising from new construction during and post construction. County/municipal building inspectors would be able to use approved lines and

grades requirement to field verify prior to issuance of Certificate of Occupancy or building permit, as appropriate.

- The Division has been seeing more small construction projects without an approved Sediment and Stormwater Plan. Sediment and Stormwater Regulations require a Sediment and Stormwater Plan for land disturbing activity 5,000 square feet or greater. Land disturbing activity may be more than the building footprint. Land disturbing activity means a land change or construction activity for residential, commercial, industrial, and institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into State waters or onto lands in the State, or which may result in accelerated stormwater runoff, including but not limited to clearing, grading, excavating, transporting, and filling land. As the City of Milford updates any land use or subdivision codes, the Sediment and Stormwater Program requests the city make a note of the Sediment and Stormwater requirements on any construction - related project application checklists, etc.

#### *Specific Comments*

Book 2, Page 12, Environment, Goal 1

Please consider the following as new objectives and or strategies:

- The City should pursue drainage easements along waterways, ditches, and storm drains where currently there are none. This would give the city the ability to hire contractors to remove blockages without the time consuming task of the State obtaining permission to trespass on the property.
- Add a Drainage Maintenance Plan to the subdivision plan requirements. Streams and ditches will require periodic reconstruction at intervals dependent upon the sedimentation load from upstream. Periodic reconstruction involves the removal of sediment from the ditch bottom to establish or reestablish a design grade. The removed sediment, referred to as spoil, is typically disposed of by spreading or piling alongside the ditch. A Drainage Management Plan would identify points of access for maintenance equipment, and designate spoil disposal areas for drainage conveyances.
- Protect wetlands by creating wetland buffers and designating such buffers as un-subdivided open space. During prolonged wet periods, the wetland buffers may become too wet for normal residential use. No portion of any building lot should be within the buffers, which will prevent decks, sheds, fences, kennels, and such from being placed within the buffers thereby reducing nuisance drainage complaints.

- Existing woodland provides valuable wildlife habitat as well as soil erosion protection and water quality filtering. The City can adopt ordinances that are more stringent than the current State of Delaware Sediment and Stormwater regulations and protect woodland, riparian buffers, and wetlands by not allow the clearing of woodland, riparian buffers, and wetlands for the creation of stormwater management areas.

Book 2, Page 13, Environment, Strategy 3.1.1

- Adequate drainage and the proper maintenance of drainage systems within and around the City of Milford is vital to existing and proposed development, agriculture, and the overall quality of life within the city. The City should identify existing open channels within the City boundary, and future annexation areas, as these channels may require maintenance in the future. The riparian buffers along the channels provide a multitude of benefits to water quality and wildlife along with recreational opportunities.

Book 2, Page 13, Environment, Objective 3.4

- Streams and ditches will require periodic reconstruction at intervals dependent upon the sedimentation load from upstream. Periodic reconstruction involves the removal of sediment from the ditch bottom to establish or re-establish a design grade. The stream or ditch may require the removal of storm debris or beaver dams. Please consider a maintenance plan component when drafting the Preservation Corridor Ordinance to accommodate future maintenance.

Book 2, Page 14, Environment, Strategy 3.4.2

- The City should identify existing open channels within the City boundary. Most of the channels have trees and wetlands adjacent to the channel and the riparian buffer provide a multitude of benefits for water quality and wildlife. By identifying such areas now, future development would incorporate the areas into community open space thereby preserving the riparian buffer.
- Explore the use of drainage ways and other open space set aside for drainage maintenance for bicycle and pedestrian interconnections in new developments.

Book 2, Page 19, Recreation, Objective 5.1

- For developments on waterways that are of sufficient size to kayak consider an unimproved launch area in the recreation open space plan. This would allow more residents to access the waterways, in a non-mechanized manor, while keeping the cost of operations and maintenance down.

Book 2, Page 23, Public Service, Goal 1

Please consider the addition of an objective on Disaster Preparedness with implementation strategies for the following.

- An inventory of dams of publicly owned dams has been developed and State Regulations for Dam Safety will be completed by the end of the year. State Dam Safety regulations apply to publicly owned dams. Dams will be classified in three hazard classifications based on impact and risk to public health and safety. Failure of a High hazard dam will cause loss of life; failure of a dam with significant hazard may cause loss of life, and failure of a low hazard dam will not cause loss of life, but may have other impacts. Each classification will have different technical requirements that it must meet when the State Regulations are promulgated. If development occurs downstream of a dam, the hazard class could change. A change in the hazard class could require a dam owner to upgrade a dam to meet the higher technical requirements. Some municipalities have sewage lagoons with dams that may qualify as a regulated dam.
- Information on dam locations and inundation areas is not available at this time. The Department will forward all documentation to the City once the data are ready for release.

Book 2, Page 23, Public Service, Objective 7.2

- The City should consider identifying any problem drainage areas within the current City boundary and the identified Urban Growth Boundary. As annexation occurs, drainage problems within those areas may become the responsibility of the City to correct.
- The City should pursue drainage easements along waterways, ditches, and storm drains where currently there is none. This would give the Town the ability to hire contractors to remove blockages without the time consuming task of the State obtaining permission to trespass on the property.

Book 2, Page 27, Additional Major Objectives, Objective 9.1

- Explore the use of drainage ways and other open space set aside for drainage maintenance for bicycle and pedestrian interconnections in new developments.

## **Floodplains**

Book 1, Page 66, 5<sup>th</sup> paragraph

1. The FEMA administers the National Flood Insurance Program (NFIP), which . . .
2. A flood ~~elevation~~ which has a 1-in-100-chance of occurring . . .

3. FEMA publishes a Flood Insurance Rate Map (FIRM) illustrating the ~~1%-annual probability area~~ Special Flood Hazard Area (Zone A or the 100-year floodplain) . . . (Mention something in the last sentence about the flood elevations being referenced from mean sea level)

Book 1, Page 66, 6<sup>th</sup> paragraph, 3<sup>rd</sup> sentence

If a floodway is restricted by new structures, flood elevations may be increased upstream of a ~~floodway~~ the restriction.

Add a definition of a floodway: The channel of a stream plus any adjacent land areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

Book 1, Page 69, last sentence

As more rainfall is diverted from infiltrating to flowing over land, flood elevations and the ~~A-Zone areas~~ Special Flood Hazard Areas will increase.

## **Habitat Preservation**

### *Future Land Use*

1. Some of the areas designated for future development may contain State-rare or federally listed species. We recommend that the City require developers (or applicants) developing parcels to contact the Natural Heritage and Endangered Species Program (NHESP) to determine if their project activities will impact a State-rare or federally listed species. In some cases a site visit may be requested in order to provide the necessary information. The City should then consider requiring implementation of recommendations provided by the NHESP before approving site plans.

Contact information:

Environmental Review Coordinator  
Natural Heritage and Endangered Species Program  
DNREC-Division of Fish and Wildlife  
4876 Hay Point Landing Rd  
Smyrna, DE 19977

### *Figure 3. Natural Features*

This map includes wetlands, floodplain, and agriculture district/easements. It does not include forested areas which are also a natural feature. Forested areas are a valuable asset not only as wildlife habitat, but for the quality of life for the City's residents.

*Chapter 10. Environmental Issues*

There was little mention of forest preservation in the Plan update, but there are some undeveloped forested parcels within the proposed ‘urban growth boundary’ on Figure 10. Cumulative forest loss throughout the State is of utmost concern to the Division of Fish and Wildlife which is responsible for conserving and managing the State’s wildlife (see [www.fw.delaware.gov](http://www.fw.delaware.gov) and the Delaware Code, Title 7). Because of an overall lack of State, County and local forest protection, we have to rely on applicants and/or the entity that approves projects (i.e., the City) to consider implementing measures that will aide in forest loss reduction. We recommend that the City consider greater forest protection for those undeveloped parcels that contain forested areas. In addition, maintaining habitat connections between forested areas is equally important for wildlife.

*Effect of Forest Loss/Fragmentation on wildlife resources*

Forest loss that has occurred over the last decade has led to a corresponding loss of forest-dependent species. For migratory birds, it is extremely important to conserve large tracts of forests in the State of Delaware due to its position within the Atlantic flyway. Forest fragmentation resulting from development separates wildlife populations, and increases “edge effects” that leave many forest dwelling species vulnerable to predation and infiltration by invasive species. When forested areas are cleared, wildlife must either co-exist with new human residents or disperse into surrounding areas. Either scenario can result in human/animal conflicts including interactions on the roadways. Greater pressure is placed on nearby protected lands such as wildlife areas, state forests and state parks as displaced wildlife compete for finite resources. Crowding wildlife into smaller and smaller ‘islands’ of habitat can also lead to an increase in disease related mortality.

Forests also provide environmental services that benefit humans directly such as water quality protection (erosion control and sediment, nutrient, biological and toxics removal), climate moderation, aesthetic value and recreational opportunities.

**Recreation**

In May and June 2008, the Division of Parks and Recreation conducted a telephone survey of Delaware residents to gather information on outdoor recreation patterns and preferences as well as other information on their landscape perception. These findings are the foundation for the new 2008-2011 Statewide Comprehensive Outdoor Recreation Plan (SCORP) which will provide guidance for investments in needed outdoor recreation facilities. In an effort to gauge local outdoor recreation preferences and to provide detailed information to municipal parks departments, five municipalities (including Milford) were oversampled. Eighty-nine percent of Milford respondents said that Outdoor Recreation was very or somewhat important to them. The SCORP survey reveals that the top 5 outdoor activities for Milford residents include:

Walking or jogging

Swimming at the beach  
Passive Recreation/ Enjoying Open Space  
Picnicking  
Swimming in a pool

The high and moderate facility needs in Milford are listed below. Consideration should be given to address/incorporate some of these recreation opportunities into the Milford Comprehensive Plan.

**High facility needs (Milford):**

Walking/Jogging Paths  
Public Swimming Pools  
Open Space/ Passive Recreation  
Picnic Areas  
Bicycle Paths  
Playgrounds  
Fishing Areas  
Hiking Trails

**Moderate facility needs (Milford):**

Softball/Baseball Fields  
Horseshoe Pits  
Campgrounds  
Football Fields  
Basketball Courts  
Access for Boating (canoe and kayak)  
Volleyball Courts  
Soccer Fields

For additional information about the SCORP or outdoor recreation priorities, contact Kendall Sommers at 302.739.9235.

**Air Quality**

How does the City intend to address, or is already addressing, mitigation for the impacts of residential development on air quality (e.g., higher density to promote more walkability/transit-friendliness, planting more trees, the Energy Star program, etc.)?

**Site Investigation and Restoration**

DNREC's Site Investigation and Restoration Branch (SIRB) encourages the development of Brownfields and can provide assistance when investigating and remediating Brownfield sites. Although SIRB has no specific comments regarding the proposed comprehensive plan at this time, if any future development occurs on sites with previous manufacturing, industrial, or agricultural use, SIRB recommends that a Phase I Environmental Site Assessment be conducted prior to development, due to the potential for a release of hazardous substances. If a release or imminent threat of a release of hazardous substances is discovered during the course of future development (e.g., contaminated water or soil); construction activities should be discontinued immediately, and DNREC should be notified at the 24-hour emergency number (800-662-8802). In addition, SIRB should be contacted as soon as possible at 302-395-2600 for further instructions.

### **Underground/Aboveground Storage Tanks**

Should any underground storage tanks or petroleum-contaminated soil be discovered by any person during construction, the DNREC-TMB and the DNREC Emergency Response Hotline must be notified within 24 hours. The DNREC-TMB and the Emergency Hotline may be reached at (302) 395-2500 and at (800) 662-8802, respectively. In addition, should any contamination be encountered, PVC pipe materials would have to be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.

All plans for UST system installations must be approved in advance by the TMB with exception of UST systems of 1,100 gallons or less that contain heating fuel for consumptive use on the premise where it is stored or systems that contain motor fuels for non-commercial purposes.

If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the DNREC-TMB. If any ASTs greater than 12,500 gallons are installed, they are subject to installation approval by the DNREC-TMB.

Should the municipality anticipate being more restrictive than Delaware's *Regulations Governing Underground Storage Tank Systems* or Delaware's *Regulations Governing Aboveground Storage Tanks*, please be aware that the municipality shall be responsible for enforcing the more restrictive rules.

### **State Fire Marshal's Office – Contact: Duane Fox 856-5298**

No comments received

### **Department of Agriculture - Contact: Scott Blaier 739-4811**

The Delaware Department of Agriculture would like to commend the City on a well-written comprehensive plan update. After reviewing the plan, we offer the following comments.

The Department of Agriculture is opposed to the Land Use Annexation Map and future Urban Growth Boundary as presented in the plan. The Department, and State, has a long-standing policy against growth east of State Route 1 (SR1).

There are currently 5,300 acres in Agricultural Lands Preservation Districts east of Milford and SR1. In addition, the State of Delaware has invested approximately 2.7 million dollars in public funds to permanently preserve 3,563 acres in that same area (please see accompanying map).

The Department believes that if additional expansion is permitted in this area, it will provide little incentive for new landowners to participate in the program. In addition, landowners already in the program are unlikely to sell a permanent preservation easement to the state

knowing that their farm will eventually be surrounded by new residential subdivisions, and all the conflicts and inconveniences that will bring.

The Department is also opposed to any annexation to the north that would include properties currently enrolled in the Agricultural Lands Preservation program. There are currently 459 acres enrolled in the program as Agricultural Districts, with the potential to become permanently preserved in the future.

The Department encourages the city to develop and promote agricultural business whenever possible. The plan already recognizes the importance of the Purdue plant and Milford Fertilizer, and the economic importance of these businesses to the city. The Department now has a fully staffed marketing section, and we encourage the town to contact them at (302) 698-4535 to see how they can help. Please contact Kelli Steele of the Department's marketing section to explore agricultural economic development activities. Food safety, nutrition, and wholesomeness are consumer priorities these days, and many people are turning to local sources of food supply. As a result, there are a number of agricultural development opportunities.

The Department urges the city to continue to work with the Delaware Forest Service to develop a formal urban forestry management plan that addresses a tree canopy goal. Trees are a vital part of any community and the Delaware Forest Service recommends that trees be preserved during the development process. A tree ordinance protecting existing woodlands in future development as well as existing street trees can be implemented to address this issue. The Delaware Urban & Community Forestry Program would be glad to offer assistance. Please contact the Delaware Forest Service for more information at (302) 698-4500.

**Public Service Commission - Contact: Andrea Maucher 739-4247**

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

**Delaware Economic Development Office – Contact: Jeff Stone 672-6849**

No comments received

**Delaware Division of Public Health- Health Promotion Bureau- contact Michelle Eichinger (302) 744-1011**

Ensuring that new residential and commercial development incorporates pedestrian- and bicycle-friendly features allows people to travel by foot or by bicycle and promotes physical activity as part of daily routines. Regular physical activity offers a number of health benefits, including maintenance of weight and prevention of heart disease, type 2 diabetes and other chronic diseases.<sup>1</sup> Research shows that incorporating physical activity into daily routines has the potential to be a more effective and sustainable public health strategy than structured exercise programs.<sup>2</sup> This is particularly important considering

about 65% of adult Delawareans are either overweight or obese.<sup>3</sup> This current obesity crisis is also affecting children. Approximately 37% of Delaware's children are overweight or obese<sup>4</sup>, which places them at risk for a range of health consequences that include abnormal cholesterol, high blood pressure, type 2 diabetes, asthma, depression and anxiety.<sup>1</sup>

In Delaware, as in other states across the nation, certain patterns of land use can act as a barrier to physical activity and healthy eating for children and adults alike. Examples of such barriers include neighborhoods constructed without sidewalks or parks and shopping centers with full-service grocery stores situated too far from residential areas to allow for walking or biking between them.

As a way to promote physical activity and access to healthy foods, we recommend that the following be included in the City of Milford Comprehensive Review:

### **Increase opportunities for physical activity and active transportation**

- Modify existing zoning codes to require that new subdivisions be constructed with sidewalks and also set aside open space for active recreation. Studies have shown that the proximity of neighborhoods to parks, trails and greenways can increase residents' levels of daily physical activity. In fact, a survey of U.S. adults revealed that those with access to neighborhood parks were almost two times as likely to be physically active as those who did not have access to parks.<sup>6</sup>
- Ensure accessibility of the community center proposed in Milford's plan with surrounding areas via bike paths, sidewalks, walking trails, and/or crosswalks.
- Ensure connectivity of commercial properties with surrounding areas.

### **Increase opportunities for healthy eating**

- Designate an area for a seasonal farm stand or mini farmer's market that will promote the sale of fruits and vegetables.
- Explore opportunities for a community garden, especially if there are vacant lots. Community gardens not only provide residents access to healthy nutrition, but they also provide opportunities for physical activity and community cohesiveness.<sup>5</sup>

### **Promote a healthy community**

- Explore ways to promote a healthy community in the City of Milford. The Division of Public Health with the University of Delaware's Institute for Public Administration produced a resource manual to increase opportunities for a healthy community. Here is the link to this document, [http://www.ipa.udel.edu/publications/HealthyCommunities\\_guideWeb.pdf](http://www.ipa.udel.edu/publications/HealthyCommunities_guideWeb.pdf)

<sup>1</sup> Nemours Health and Prevention Services (2005). *Delaware Children's Health Chartbook*, Newark, DE.

<sup>2</sup> Active Living by Design. *Transportation Fact Sheet*. Retrieved May 17, 2007, from [http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/Transportation\\_Factsheet.pdf](http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/Transportation_Factsheet.pdf).

<sup>3</sup> Delaware Health and Social Services (2008), *Division of Public Health, Behavioral Risk Factor Surveillance System (BRFSS), 1990-2007*.

<sup>4</sup> Nemours Health and Prevention Services (2007). *2006 Delaware Survey of Children's Health Descriptive Statistics Summary, Volume 1*.

<sup>5</sup> Hancock, T. (2001). People, partnerships and human progress: building community capital. *Health Promotion International*, 16(3), 275-80.

<sup>6</sup> Active Living by Design. *Parks Trails, and Greenways Fact Sheet*.

### **Delaware State Housing Authority – Contact Vicki Powers 739-4263**

DSHA has reviewed the Municipal Comprehensive Plan for the City of Milford to determine how the Municipality has incorporated the State's goals, policies, and strategies as they relate to affordable housing. Since the City of Milford has a population over 2,000 people, HB 396 mandates that towns of 2,000 or more develop a Plan to address affordable housing, which the Plan does state. The City of Milford's Plan includes a descriptive section on its housing stock and future housing needs, including the need for affordable housing. The Plan includes several recommendations to increase diversity in the new housing stock through zoning designations, and to preserve their existing affordable housing stock through programs such as the Community Development Block Grant Program. Furthermore, we support the City's effort to maintain affordable housing central to work places, shopping, and recreation and encourage coordination of resources with DSHA and other non-profit housing developers.

In addition, the following list of tools and mechanisms are examples of some initiatives that the City of Milford can implement in creating affordable housing opportunities to residents and employees:

- Innovative zoning techniques to provide additional affordable housing opportunities within the existing housing stock, such as permitting accessory dwelling units in residential areas as a matter of right;
- Require, as part of all annexation agreements for parcels being annexed, that some of the units be set aside to be affordable for low- and moderate-income persons via long-term affordability restrictions;
- Partner with the Diamond State Community Land Trust (DSCLT) to ensure long-term affordable homeownership opportunities to low- and moderate-income households. This can be done by donating land to the DSCLT, within the City of Milford, or through contractual agreements for monitoring long-term affordability restrictions on units that have been set aside to be affordable; and

- Provide developer incentives, such as density bonuses or expedited review, to facilitate affordable housing opportunities.

DSHA has developed a website, **Affordable Housing Resource Center**, to learn about resources and tools to help create housing for households earning 100% of median income or below.

The DSHA website can be found at: [www.destatehousing.com](http://www.destatehousing.com) "Affordable Housing Resource Center" under our new initiatives.

If you have any questions or would like to explore any of the housing tools in more depth, please feel free to call Victoria Powers at (302) 739-4263 ext. 219 or via e-mail at [vicky@destatehousing.com](mailto:vicky@destatehousing.com). Thank you.

**Department of Education – Contact: John Marinucci 735-4055**

The DOE supports the State Strategies for Policies and Spending, to the extent possible and practicable within the limits of the Federal and State mandates under which the Department operates

1. In its review of Comprehensive Plans and Comprehensive Plan Amendments, the DOE considers:
  - Adequate civil infrastructure availability within the region to accommodate current and future educational facilities.
  - Transportation system connections and availability to support multimodal access within the community, to include but not limited to walk paths, bike paths, and safe pedestrian grade crossings.
  - Transportation road system adequacy to accommodate bus and delivery vehicle traffic to current, planned or potential educational facilities.
  - Recreation facilities and opportunities within the community and their respective proximity to current and planned or potential education facilities. The DOE also recognizes the potential that the educational facilities are to be considered recreational facilities by and within the community.
2. The DOE *typically* considers industrial/commercial development incompatible with educational facilities, however, residential development and educational facilities *are typically* considered to be compatible. As a result, the DOE is interested in the proximity of current and planned or potential education facilities to commercial/industrial development zones.
3. The DOE recognizes the integral role of educational facilities within communities. As such, the DOE seeks to assure that residential growth, that generates additional demand on educational facilities, is managed with adequate educational infrastructure being made a part of sub-division plans as appropriate.

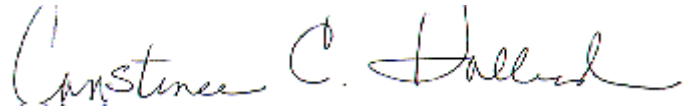
4. The DOE offers its support and involvement to coordinate with the town, the local school districts, the Office of State Planning Coordination as well as other school districts and stakeholders.
5. Page 31 of Book 1 refers to the Milford School District as being an urban school district and considers this as a potential factor motivating general educational satisfaction. The City of Milford may wish to reconsider the language in this section. Further, the City of Milford should make reference to the Milford School District's current \$75.5 Million major capital improvement program that includes two new schools and major renovations to several of its existing schools.
6. DOE has no further comments regarding the Comprehensive Plan update under consideration.

***Approval Procedures:***

1. Once all edits, changes and corrections have been made to the plan, please submit the completed document (text and maps) to our office for review. **Your PLUS response letter should accompany this submission.** Also include documentation about the public review process. In addition, please include documentation that the plan has been sent to other jurisdictions for review and comment, and include any comments received and your response to them.
2. Our office will require a maximum of 20 working days to complete this review.
  - a. If our review determines that the revisions have adequately addressed all certification items, we will forward you a letter to this effect.
  - b. If there are outstanding items we will document them in a letter, and ask the town to resubmit the plan once the items are addressed. Once all items are addressed, we will send you the letter as described above.
3. Once you receive our letter stating that all certification items have been addressed, your Planning Commission and Council should adopt the plan pending State certification. We strongly recommend that your Council adopt the plan by ordinance. The ordinance should be written so that the plan will go into effect upon receipt of the certification letter from the Governor.
4. Send our office a copy of the adopted plan along with the ordinance (or other documentation) that formally adopts your plan. We will forward these materials to the Governor for her consideration.
5. At her discretion, the Governor will issue a certification letter to your City.
6. Once you receive your certification letter, please forward two (2) bound paper copies and one electronic copy of your plan to our office for our records.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in blue ink that reads "Constance C. Holland". The signature is written in a cursive style with a large initial 'C'.

Constance C. Holland, AICP  
Director

CC: Kent County  
Sussex County